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Subject: Availability of Funds and Collection of Checks

The Bank of Floyd is pleased to submit our comments on the Federal Reserve Board's proposed amendments to Regulation CC and its Commentary to implement the Check Clearing for the 21st Century Act published in the January 8, 2004 Federal Register.

We generally support the proposed amendments.

We feel that even if the MICR line on the substitute check does not accurately represent the MICR line on the original check, the substitute check should still qualify as the legal equivalent of the original check. This approach will best serve the operating needs and expectations of the parties processing and receiving substitute checks. In many cases a collecting bank may not know that there is an error in the MICR line of a substitute check that it receives from a reconverting bank. However, if the bank does determine that it has a substitute check with an incorrect MICR line, the bank should be permitted to correct the MICR line on the substitute check. There should not be an obligation for a bank to repair the MICR line on a substitute check and not doing so should not affect the legal equivalent status. Banks repairing a substitute check should treat the substitute check in the same manner they would handle an original check today.

Failure to encode position 44 in compliance with the generally applicable industry standards should not affect the status of the substitute check as the legal equivalent of the original check.

We believe that the final rule should include a provision that authorizes a paying bank to create a legally equivalent substitute check without printing the MICR line information in MICR ink. Substitute checks that are paid and canceled by the paying bank, and are being delivered by the paying bank to its drawer customers, do not need to be printed in MICR ink. These substitute checks will not be further processed on an automated basis. Accordingly, it is not reasonable to require a paying bank to incur the cost of using MICR ink to create this class of substitute checks.

We recommend that the Federal Reserve clarify that the generally applicable industry standards that are identified in the Commentary are an exclusive list of generally applicable industry standards. As new standards are developed, the Federal Reserve can propose changes to the Commentary to recognize them as "generally applicable" industry standards and give banks the opportunity to comment at that time.

We support the alternative for delivery of the notice at the time the bank provides the substitute check. The bank may not know at the time the consumer makes the request for the copy of a check that it will be providing a substitute check. The notice would be more effective if it is delivered to the consumer with the substitute check rather than when the request is made. It may also be more efficient for the bank to provide the notice with the substitute check.

We do not believe that the Section 5(2) warranty should apply to ACH debits. These type of transactions are sufficiently covered under the ACH and electronic funds transfer rules.

We recommend a short, concise, reader friendly consumer education disclosure

notice. Consumers are less likely to read long, complicated disclosures than short, straightforward ones and may be unnecessarily confused by the complexity of the proposed model disclosure.

We believe that "banking day" should be used rather than business day in computation of time when making a claim because the part of the bank responsible for investigating the claim will only be open on a banking day.

The proposed Commentary explains that the consumer must provide the reason why the original check or sufficient copy is necessary to determine the validity of a claim. The Commentary lists explicit examples. We feel that it would be better for the Board to omit the examples. The example concerning pen pressure would compel banks to store virtually all checks to protect themselves against false claims.

The Board should require that all indorsements be printed in black ink. Black ink will ensure the greatest clarity and legibility of the indorsements. We do not recommend that returning banks be allowed to indorse on the front of the checks because it will hinder review and analysis of important information on the front of the check such as alternations and forged signatures. Also, most systems are not set up to review the front of the check for indorsements.

We have concerns that the 10 business days allowed for investigating a claim may not allow enough time to get original check/information from the depository bank. This could increase losses if the bank re-credits the customers account prior to finishing its investigation. The customer could spend the money before the bank completes its investigation and determines that the credit needs to be reversed.

We thank you for the opportunity to comment on this proposal. We hope that you will consider our suggestions and concerns.

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